

No new matter has been added by the above amendment. Claims 53-84 are now pending in the application.

ELECTION

The Examiner has restricted the claimed invention as follows:

Group I, claim(s) 1-10, 1-21 [sic, 11-21], 49, and 50, drawn to a method of treating cancer.

Group II, claim(s) 22, drawn to a method of treating a skin disease.

Group III, claim(s) 23-40, drawn to a method of making a fatty acid.

Group IV, claim(s) 41, 42, 46, and 52, drawn to a fatty acid composition.

Group V, claim(s) 47, drawn to a method of immune boosting.

Group VI, claim(s) 48, drawn to a method of prolonging aging.

The Examiner has also required an election of species as follows:

A) bacterial strains selected from those in claims 5-7, 26-28, and 32-34; and

B) cancers from claims 12 and 50.

Applicant elects Group III, i.e., Claims 23-40, which are now Claims 54-71, **with traverse**.

Applicant elects the bacterial strain of Claim 7 as the species of bacteria, **with traverse**. Since the elected invention is not drawn to specific cancers, the election of species therefor is moot.

Claims 54-71 and 79-84 read on the elected species.

Restriction is only proper in a national stage application filed pursuant to 35 U.S.C. 371 if the application lacks unity of invention under 37 CFR 1.475. See 37 CFR 1.499 and MPEP 1893.03(d). The Examiner has not made out a case of lack of unity of invention.

Indeed, it is noted that the Examiner who conducted preliminary examination in the corresponding international application, and whose name is listed on the IPER, appears to be the same as the present Examiner, yet no lack of unity of invention was found in the IPER on claims the same as the claims filed herein. Thus, the Examiner's present position would appear to be contrary to that adopted in the IPER.

See MPEP 1875, 1800-108.
A group of inventions is considered linked as to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature, i.e., the technical feature that defines the contribution which each claimed invention, considered as a whole, makes over the prior art. See, for example, PCT Rule 13.2 and Examples 1-30 of Annex B Part 2 of the PCT Administrative Instructions as in force from April 1, 1995 contained in Appendix AI of the MPEP.

A process is "specially adapted" for the manufacture of a product is the claimed process inherently produces the claimed product with the technical relationship being present between the claimed process and the claimed product. The expression "specially adapted" does not imply that the product could not also be manufactured by a different process.

Note, the determination regarding unity of invention is made without regard to whether a group of inventions is claimed in separate claims or as alternatives within a single claim. The basic criteria for unity of invention are the same, regardless of the manner in which applicant chooses to draft a claim or claims.

The special technical feature here that informs all the claimed inventions is the at least one terminally methyl-branched iso- or anteiso-fatty acid. As disclosed in the specification, the invention herein involves the discovery that such a fatty acid has many

not a special technical feature.

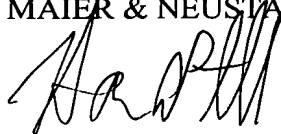
uses, including treatment and prevention of cancer, skin treatment, immune boosting, and prolonging aging. Thus, a case of lack of unity of invention has not been made out.

Nor is it clear what the authority is of the Examiner to require an election of species in a national stage application that is necessarily governed by rules of unity of invention, not those of United States restriction requirements. Even if such authority does exist, there would appear to be no rational basis for requiring election of species with regard to bacterial strains or cancers. No undue burden would appear to be imposed on the Examiner in examining the claimed invention with regard to any and all bacterial strains which have the property recited in, for example, Claim 54, and with regard to any and all cancers. For example, the Examiner has not demonstrated that searches of different subclasses are required depending on a particular bacteria and/or cancer.

For all the above reasons, it is respectfully requested that the Restriction Requirement be withdrawn, and that all claims of the application be examined.

Respectfully submitted,

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a requirement
under
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IN THE CLAIMS

Claims 1-10, 12-42, 46-50 and 52 (Canceled)

Claims 53-84 (New)